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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,660	03/06/2006	Eleanor Keogh	050026-0028	1225

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MCDERMOTT WILL & EMERY LLP
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WASHINGTON, DC 20005-3096

EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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01/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/570,660	Applicant(s) KEOGH, ELEANOR	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-13, 15, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terrell (USP 5,065,778) in view of Masterson (USP 4,020,856).

Terrell discloses a nail polish removing device (fig. 2) comprising a container (21) including a nail polish removing solution compartment (27) in a bottom part thereof, an opening (36) adapted to receive a portion of a foot to be cleaned in a lateral manner, a porous and pliable medium (43) disposed in the container at least partly above the solution compartment (see fig. 2) and in contact with the solution (when the container is inverted col. 3, lines 33-38); the solution at least partly permeates the porous member, the porous having a slot (36-40) adapted to receive a portion of the foot, the slot disposed in alignment with the opening (see fig. 3), a cover (31) for sealing the compartment (27) against a loss of the solution; the solution is uniformly absorbed in the porous member by a combination of agitation (when the container is inverted) and capillary action; The container being made of plastic (col. 2, lines 40, 41) and the porous being a sponge (col. 3, line 15). The device is inherently can be use to remove nail polish from toes. Terrell fails to show the opening of the container located on a side wall. Masterson discloses a fingernail and hand cleaning device having a container (12)

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with a side wall (fig. 1), wherein the side wall having an opening (24) for inserting the fingernail or hand to be cleanse. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the opening on the side wall of the container as taught by Masterson into the device of Terrell as an alternative way of providing an easy way to insert the finger or hand into the container of the device.

Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terrel in view of Masterson as applied to claims 1 and 10 above, and further in view of Miller (USP 4,510,954).

Terrell in view of Masterson disclose the essential claimed invention except for the container further having a ledge disposed at bottom of the opening. Miller discloses a fingernail polish remover (fig. 3) comprising a container (12) having an opening (26), a ledge (32) disposed at bottom of the opening. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the ledge as taught by miller into the device of Terrell in view of Masterson in order to provide a finger's rest to the device.

Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terrel in view of Masterson as applied to claims 1 and 10 above, and further in view of Gary et al (USP 6,695,800).

Terrell in view of Masterson disclose the essential claimed invention except for the container further having non-skid means. Gary et al discloses a hand treatment device (fig. 10) comprising a non-skid means (234). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the non-

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skid means as taught by Gary et al into the device of Terrell in view of Masterson in order to enhance attachment to the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732